

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Darrell Clifford,	)	
	)	
Plaintiff,	)	<b>REPORT AND RECOMMENDATION</b>
	)	
vs.	)	
	)	
Former Warden (Don Redman) NDSP	)	
Leann K. Bertsch (Director) DOCR for the	)	
State of North Dakota,	)	Case No. 1:17-cv-026
	)	
Defendants.	)	

The defendant, Darrell W. Clifford (“Clifford”), is serving a life sentence at the North Dakota State Penitentiary (“NDSP”). He initiated the above-entitled action *pro se* against defendants in their individual capacities in February 2017. He is essentially complaining about an institutional ban on sexually explicit materials.

Defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on May 24, 2017. Citing, amongst other things, a copy of the NDSP mail policies appended to their motion, they aver that the ban at issue is reasonably related to legitimate penological interests, i.e., safety, security, and rehabilitation. They further aver that they are qualifiedly immune from suit.

D.N.D. Civ. L.R. 7.1(A)(1) provides that, upon service of the dispositive motion, the adverse party has 21 days in which to file a response. D.N.D Civ. L.R. Rule 7.1(F) provides that failure to respond to a motion in the time prescribed may be deemed an admission that the motion is well taken.

Approximately 57 days defendants have filed their motion and Clifford has neither filed a response nor requested additional time to prepare a response. The fact that Clifford is proceeding

*pro se* does not excuse his noncompliance with the rules of civil procedure. Cody v. Leon, 486 Fed. App'x 644 (8th Cir. 2012) (citing Brown v. Frey, 806 F.2d 801, 804 (8th Cir.1986)). Consequently, under D.N.D. Civ. L.R. 7.1. (F), Clifford's failure to serve and file a timely response should be deemed an admission that defendant's motion is well taken.

Accordingly, the undersigned **RECOMMENDS** that defendant's Motion to Dismiss (Docket No. 11) be **GRANTED**.

**NOTICE OF RIGHT TO FILE OBJECTIONS**

Pursuant to D.N.D. Civil L.R. 72.1(D)(3), any party may object to this recommendation within fourteen (14) days after being served with a copy of this Report and Recommendation. Failure to file appropriate objections may result in the recommended action being taken without further notice or opportunity to respond.

Dated this 21st day of July, 2017.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court